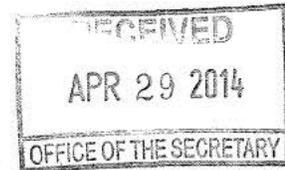


UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15671

In the Matter of

PATRICK G. ROONEY,

Respondent.

**RESPONDENT'S OPPOSITION TO
MOTION FOR SUMMARY DISPOSITION**

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**RESPONDENT'S OPPOSITION TO
MOTION FOR SUMMARY DISPOSITION**

In opposition to the Securities and Exchange Commission's Motion for Summary Disposition, Respondent, Patrick G. Rooney, states the following:

I. INTRODUCTION

In the interest of cooperating with the Commission to resolve this matter, Patrick Rooney consented to a permanent injunction from violating the securities laws. As part of the consent, Mr. Rooney neither admitted nor denied liability. The parties submitted no evidence to the District Court, which made no findings of fact or law. Thus, while none of the allegations have been proved, for purposes of this administrative proceeding and the Commission's Motion for Summary Disposition, Mr. Rooney does not contest the allegations in the complaint. Rather, as is his right under 17 C.F.R. § 202.5(e), Mr. Rooney neither admits nor denies the allegations in the complaint. At the same time, much of what the Commission states in its Memorandum of Law is not supported by the uncontested facts or the allegations.

In this follow-on administrative proceeding, the Commission seeks additional injunctive relief against Mr. Rooney, in the form of a collateral bar pursuant to section 203(f) of the Advisers Act. (15 U.S.C. § 80b-3(f).) Yet, none of the prerequisites for a collateral bar exist. Issuing such a bar is not a requirement merely because the Commission filed this proceeding. Accordingly, the collateral bar sought by the Commission should be denied, and remedies to be granted against Mr. Rooney, if any, should be left instead to the District Court which is charged with deciding whether disgorgement, a civil penalty or a permanent injunction is appropriate.

II. FACTS

Patrick Rooney is the sole owner and manager of an unregistered investment adviser called Solaris Management, LLC (“Solaris”). Solaris has managed the Solaris Opportunity Fund, LP (the “Fund” or the “Opportunity Fund”) since its inception.¹ Mr. Rooney is also the Chief Executive Officer of Positron Corporation, having served as Chairman since 2004 and CEO since 2009. The Commission alleges that Mr. Rooney misrepresented the Fund’s investment strategy in that he did not disclose the Fund was acquiring a substantial interest in Positron. (Compl. at ¶¶ 1-3.) However, as important as what the Commission has alleged in its complaint and in its Memorandum is what it has omitted, and these omissions are particularly relevant in considering the bar sought in this proceeding.

A. Mr. Rooney has been in the Securities Industry for 30 Years Without Incident

The Commission never alleged in the complaint that Mr. Rooney is a recidivist. To the contrary, Mr. Rooney has been in the securities industry since 1984 without any regulatory incident or violation of the federal securities laws. He began working as a clerk on the floor of the Chicago Board Options Exchange (“CBOE”) in 1984. He became a filling broker in 1985, handling thousands of customer orders over the next year. He was a market maker from 1986 until 2001, trading equities and index options on a daily basis. During that time, he traded millions of securities contracts without incident. He has been a member of the CBOE, the Chicago Board of Trade and the Chicago Mercantile Exchange – again, entirely without incident.

B. In a Prior Investigation, the Commission Analyzed the Conduct At Issue In This Case and Determined No Action was Necessary

This case is unique, in that it was filed after the Commission had conducted an investigation and concluded that no action would be taken. In particular, in an investigation

¹ Solaris Management also manages the Solaris Offshore Fund (the “Offshore Fund”). The Offshore Fund is a feeder fund for the Opportunity Fund. Its only investment is in the Opportunity Fund.

begun in 2006 relating to the Fund and Mr. Rooney, the Commission interviewed Mr. Rooney, requested and reviewed hundreds of documents, scrutinized much of the very conduct alleged in this case and informed Mr. Rooney it was not recommending any enforcement action. The 2006 interview addressed Mr. Rooney's position as Chairman of Positron. (Ex. A at p. 15.)² It addressed the fact that Mr. Rooney prepared all the marketing materials for the Fund. (*Id.* at 53.) The 2006 interview addressed the off-market transactions in Positron discussed in the complaint. (*Id.* at 182.) The 2006 interview addressed whether the Positron position was hedged and whether it was consistent with the marketing materials. (*Id.* at 181.) The 2006 interview addressed whether the Fund disclosed to its investors a potential conflict of interest regarding the Positron investment. (*Id.* at 188.) The 2006 interview addressed whether the Positron position, or any other position, was ever disclosed to the Fund's investors. (*Id.*) Finally, the 2006 interview addressed the terms of some of the private transactions identified in the complaint. (*E.g., Id.* at 195.)

It is particularly noteworthy that the District Court in this case found that the 2006 interview addressed the same issues as the complaint. (Exhibit B.) The District Court stated:

In this case, the SEC formally conducted an interview with Rooney concerning his involvement with Positron on August 8, 2006. The information requested during the interview concerned the same issues raised in the SEC complaint. The date of the interview predates the November 11, 2011 complaint by more than five years, potentially barring the SEC claim. (*Emphasis added.*)

The Court held that the 2006 interview potentially barred the Commission's claims for a civil penalty against Mr. Rooney. (*Id.*)

In that investigation, after thoroughly investigating the conduct that is the principal part of the complaint, the Commission's Staff, on March 9, 2009, sent Solaris, the Fund and Mr. Rooney individual letters stating, "This investigation has been completed as to Patrick Rooney,

² The transcript has been excerpted.

against whom we do not intend to recommend any enforcement action by the Commission.” (Exhibit C.) Thus, the Commission investigated much of the same conduct now at issue in this case and took no action. Naturally, Mr. Rooney understood the Commission’s findings in those 2009 letters as an indication that his conduct was not unlawful and the Fund could continue investing in Positron. (Exhibit D, Rooney Affidavit, at ¶ 4)

C. The Fund Had a Substantial Portfolio of Investments Other Than Positron

In the complaint, the Commission alleges that, “by November 2008, the Fund had all its assets invested in Positron.” (Compl. at ¶ 2.) However, the Commission fails to allege in the complaint that, prior to November 2008, the Fund had a substantial portfolio of non-Positron investments which it actively traded every day. (Rooney Aff. at ¶ 6.) In 2007 and 2008, the Fund incurred major trading losses in the broad market, shrinking the portfolio of non-Positron investments. (Rooney Aff. at ¶ 7.) Thus, while the Fund ultimately became wholly invested in Positron, that concentration was due, in large part, to market losses causing substantial loss in value in the Fund’s non-Positron portfolio. (Rooney Aff. at ¶ 7.) The complaint is silent on this critical point.

D. Positron Has Had Numerous Investors Other Than Solaris

The complaint alleges that Mr. Rooney used Solaris as a source of funding for Positron when it could not find other investors. (Compl. at ¶ 2. *See also* Pl. Mem. at 4.) Again, Mr. Rooney has agreed to not to contest this allegation for purposes of this proceeding. However, the Commission omits the fact that Positron has had numerous investors other than Solaris. (Rooney Aff. at ¶ 10.) Mr. Rooney estimates that Positron has had at least 100 investors other than Solaris during his time there. (*Id.*) In fact, Solaris has not invested in Positron since 2008. (*Id.*) Since 2008, Mr. Rooney estimates that Positron has had at least 30 different investors. (*Id.*)

E. The Commission's Request for a Bar

In December 2013, Mr. Rooney consented to entry of a judgment and permanent injunction from violating the federal securities laws, without admitting or denying liability and without any findings of fact. Mr. Rooney consented to terms which prohibit him from contesting the allegations in the complaint in this administrative proceeding. Thus, consistent with 17 C.F.R. § 202.5(e), Mr. Rooney neither admits nor denies the allegations in the complaint. The effect of this action is to permit the District Court to determine penalties, if any, against Solaris, the Fund and Mr. Rooney.

In addition to pursuing disgorgement, a civil penalty and an injunction before the District Court, the Commission seeks to “pile on,” asking for imposition of a permanent industry bar. In addition to the absence of any basis for doing so, it should be noted that Mr. Rooney has no intention of working as an investment advisor or broker, managing an investment fund or otherwise managing other people’s money. (Rooney Aff. at ¶ 8.) Once matters regarding Solaris are appropriately resolved, he intends to dedicate his full attention to executing Positron’s long-term plan and optimizing the return for Positron’s shareholders and the Fund’s investors.

III. ARGUMENT

A. Public Interest Does Not Favor a Collateral Bar

“It is well settled that the Commission cannot obtain relief without positive proof of a reasonable likelihood that past wrongdoing will recur.” *SEC v. Bausch & Lomb Inc.*, 565 F.2d 8, 18 (2d Cir. 1977). Illegal activity, without more, does not automatically justify the issuance of an injunction and “There is no per se rule requiring the issuance of an injunction upon the showing of a past violation.” (*Id.*) The SEC must show “more than the mere possibility” of a future violation. (*Id.*) See also *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 997 (8th Cir. 2011) (discussing public interest).

There is no public interest in granting the Commission's request for further injunctive relief. The Commission seeks a collateral bar, preventing Mr. Rooney from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or national recognized statistical ratings agency. First, Mr. Rooney has not demonstrated a proclivity for violating the securities laws. To the contrary, the allegations in the complaint reflect an isolated incident in a long career in the securities industry. Second, Mr. Rooney has never served as or been employed by a broker, dealer, municipal securities dealer, municipal advisor, transfer agent or national recognized statistical ratings agency; much less violated the securities laws in that capacity. The public could not possibly have an interest in prohibiting Mr. Rooney from lawful employment in a position he has never held, much less used to violate the securities laws. Thus, there is no public interest in preventing Mr. Rooney from working in these fields.

B. The *Steadman* Factors Mitigate Against a Collateral Bar

Under *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir.1979), a court must consider a number of factors when imposing sanctions for an investment adviser's securities fraud violations: (1) the egregiousness of his actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of his assurances against future violations, (5) his recognition of the wrongful nature of his conduct, and (6) the likelihood that his occupation will present opportunities for future violations. *Gibson v. S.E.C.*, 561 F.3d 548 (6th Cir. 2009). In this case, none of the factors favors the additional relief against Mr. Rooney sought by the Commission.

1. The Egregiousness of the Underlying Violation

As stated earlier, prior to the investigation giving rise to this action, the Commission conducted a separate investigation of the same events in the Complaint and found no basis for an

enforcement action. The District Court in this case confirmed that the prior investigation “concerned the same issues raised in the SEC complaint.” (Ex. B.) The Commission terminated the prior investigation with a letter stating, “This investigation has been completed as to [respectively, Solaris Management, LLC, Solaris Opportunity Fund, LP and Patrick Rooney], against whom we do not intend to recommend any enforcement action by the Commission.” (Ex. C.) Thus, the Commission did not think the conduct at issue warranted any enforcement action whatsoever.

In light of its prior stance on the same conduct, the Commission cannot credibly clamor about how “egregious” Mr. Rooney’s conduct actually was. Had the conduct been as egregious as the Commission now contends, it is reasonable to assume the Commission would have taken *some* action after the first investigation. The Commission’s conduct in this matter demonstrates that the allegations do not warrant the additional relief it seeks here. *See Johnson v. SEC*, 87 F.3d484, 490n. 9 (D.C.Cir.1996) (noting that the Commission’s delay in taking action belied the severity of the allegations).

Moreover, it is not egregious to shift investments from those that were losing money to those that had an opportunity to be valuable, even if only in the long run. Funds were not diverted from the Fund; the Fund continued to maintain an investment for its participants but in the form of Positron notes and shares, rather than trading in options or futures which were unprofitable as the economy forced many long-established businesses to close their doors. Mr. Rooney did not abandon his investors; he is present to this day, he talks to his investors frequently, and has not misappropriated any investor funds.

2. Mr. Rooney is Not a Recidivist

The complaint does not allege Mr. Rooney is a recidivist. In a thirty-year career in the securities industry, this is the first and only allegation of wrongdoing against Mr. Rooney. Nor is

this a case of repeated conduct. Courts reliably hold that a single course of conduct is not a “repeated” offense. *See e.g., SEC v. Conaway*, 697 F.Supp.2d 733, 772-73 (E.D.Mich. 2010). As in *Conaway*, the allegations in the Complaint identify an isolated event in an otherwise spotless career in the securities industry.

3. The Allegations in the Complaint Do Not Reflect Heightened Scienter

Pursuant to the consent, Mr. Rooney has agreed not to contest the allegation that he acted with scienter in this administrative proceeding. The *Steadman* factors, however, refer to the “degree” of scienter, rather than the mere existence of scienter. To the extent the Complaint supports any finding of scienter, it certainly does not support a finding of a heightened level of scienter. First, Mr. Rooney told the Commission that Solaris was making large investments in Positron before the events at issue in the Complaint. After investigating the same conduct outlined in the Complaint, the Commission sent letters stating, “This investigation has been completed as to [respectively, Solaris Management, LLC, Solaris Opportunity Fund, LP and Patrick Rooney], against whom we do not intend to recommend any enforcement action by the Commission.” Naturally, Mr. Rooney took this letter as an indication that his conduct regarding Positron and Solaris was proper. (Rooney Aff. at ¶ 4.)

Additionally, the complaint states unambiguously that Mr. Rooney disclosed the Positron investment to his shareholders, of his own volition, years prior to the Commission’s complaint. Thus, the allegations in the complaint do not establish a heightened level of scienter.

4. Assurances Against Future Misconduct

Mr. Rooney consented to a permanent injunction from violating the securities laws and has no intention of acting as an investment adviser or otherwise managing money for others in the future. (Rooney Aff. at 8.) Mr. Rooney intends to devote all his time to Positron. Mr.

Rooney assures the Commission that he will not in the future commit the type of conduct alleged in the complaint. (Rooney Aff. at 8.)

The Commission states in its Memorandum, with absolutely no support, that Mr. Rooney has an “apparent intention to continue work in the [securities] industry.” (Pl. Mem. at 12.) The Commission does not have any basis for this statement. In fact, it is incorrect. Mr. Rooney has no current intention to return to the securities industry. He intends to take all appropriate steps to resolve Solaris matters, then dedicate himself completely to Positron. Furthermore, the Commission asserts, again with no support, that Mr. Rooney has demonstrated his proclivity for violating a multitude of securities laws over an extended period of time. (Pl. Mem. at 13.) This is pure fantasy. Mr. Rooney has never been the subject of any other violation.

The Commission also brushes aside the consent and permanent injunction, as though they are meaningless. However, “A permanent injunction is a drastic remedy.” *Steadman*, 967 F.2d at 648. “Here, as in many securities cases, the potential collateral consequences of a permanent injunction are quite serious. The practical effect of such an injunction here would be to stigmatize defendants in the investment community and significantly impair their ability to pursue a career.” *SEC v. Jones*, 476 F.Supp.2d 374, 385 (S.D.N.Y.2007) (citations omitted).

The permanent injunction to which Mr. Rooney consented is a major concession. His public reputation has suffered tremendously as a result and it has undoubtedly severely damaged his professional prospects. The injunction and consent are two strong assurances against future misconduct, and no additional injunctive relief is justified.

5. Recognition of the Wrongful Nature of the Conduct

Although Mr. Rooney does not admit or deny the allegations in the complaint, as is his right under the consent and 17 C.F.R. § 202.5(e), Mr. Rooney acknowledges the wrongful nature of his conduct. He consented to a permanent injunction from violating the securities laws and

agreed to allow the District Court to determine the amount of disgorgement, civil penalties and a possible officer and director bar.

Furthermore, the fact that Mr. Rooney chose to defend himself against the Commission's allegations is not evidence that he does not acknowledge the wrongful nature of his conduct. A defendant cannot be prejudiced by his decision to vigorously contest the allegations against him. *SEC v. Happ*, 295 F.Supp.2d 189, 197 (D.Mass.2003); *SEC v. Yun*, 148 F.Supp.2d 1287, 1294 (M.D.Fla.2001) ("a full and vigorous defense is a right under our system of justice"); *SEC v. Ingoldsby*, No. 88-cv-1001, 1990 WL 120731, at *3 (D.Mass. May 15, 1990) ("Absent a showing of bad faith, the defendant should not be prejudiced for presenting a vigorous defense and requiring the SEC to meet the proper evidentiary burden both at trial and at the injunctive relief stage of judicial proceedings."). Thus, Mr. Rooney should not be penalized for defending himself.

6. The Misconduct Will Not Recur

Mr. Rooney assures the Commission that he will not, in the future, commit any violations such as those alleged in the complaint. As a primary matter, Mr. Rooney has no intention of ever again acting as an investment adviser or otherwise managing a fund of any kind. Moreover, Mr. Rooney fervently desires to avoid running afoul of the securities laws.

C. Section 203(f) Does Not Require a Permanent Bar

Section 203(f) of the Advisers Act does not require a permanent collateral bar in this case. (15 U.S.C. § 80b-3(f).) To the contrary, section 203(f) provides a broad array of potential sanctions, including censure, limitations and suspension. Given Mr. Rooney's consent to a permanent injunction from violating the securities laws; potential disgorgement, civil penalties and injunctive relief that may be imposed in the District Court; his cooperation; the fact that he has no intention of acting as an investment adviser in the future; the harm his public reputation

has already suffered; his acknowledgement of the wrongful nature of his conduct; his assurances against future violations and the expense of going through *two* SEC investigations regarding the same conduct, something substantially less than a permanent collateral bar is warranted in this case. If any additional sanction is warranted in this case, it should be no more than a censure or temporary suspension.

IV. CONCLUSION

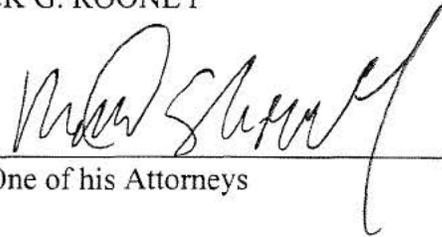
For the foregoing reasons, the Commission's motion for summary disposition should be denied and, to the extent any sanction is warranted, such sanction should be limited to censure, temporary suspension or other remedy short of a permanent collateral bar.

Respectfully submitted,

PATRICK G. ROONEY

By: _____

One of his Attorneys



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EXHIBIT "A"

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. FL-03214-A

5 SOLARIS OPPORTUNITY)

6 FUND, L.P.)

7 WITNESS: Patrick G. Rooney

8 PAGES: 1 through 247

9 PLACE: Securities and Exchange Commission

10 801 Brickell Avenue

11 Suite 18-2

12 Miami, Florida 33131

13 DATE: Tuesday, August 8, 2006

14

15 The above-entitled matter came on for hearing, pursuant

16 to notice, at 9:45 a.m.

17

18

19

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 JENNIFER OTTOSEN, SEC Attorney

5 TERESA BERGES, Assistant Regional Director

6 Division of Enforcement

7 Securities and Exchange Commission

8 801 Brickell Avenue

9 Miami, Florida 33131

10

11 On behalf of the Witness:

12 JAMES E. JUDGE, ESQ.

13 Vanasco Genelly & Miller

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21 One Biscayne Tower

22 2 Biscayne Boulevard

23 Miami, Florida 33131

24

25

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P R O C E E D I N G S

1
2 MS. OTTOSEN: We're on the record, it is August 8,
3 2006 at 10:14 a.m.. We're located at the Securities and
4 Exchange Commission in Miami, Florida.
5 Whereupon,

6 PATRICK G. ROONEY,
7 was called as a witness herein and, having been first duly
8 sworn, was examined and testified as follows:

9 EXAMINATION

10 BY MS. OTTOSEN:

11 Q Please state your full name and spell your name for
12 the record.

13 A Patrick Guerard Rooney. P-a-t-r-i-c-k
14 G-u-e-r-a-r-d, Guerard, R-o-o-n-e-y.

15 Q I'm Jennifer Ottosen and I'm here with Teresa
16 Berges The Assistant Regional Director of the Miami Office.
17 We are Officers of the Commission for the purposes of this
18 proceeding.

19 This is an investigation by the United States
20 Securities and Exchange Commission in the matter of Solaris
21 Opportunity Fund, FL-3214 to determine whether there have
22 been violations of certain provisions of the Federal
23 Securities Laws.

24 However, the facts developed in this investigation
25 might constitute violations of other Federal or State, Civil

- 1 Q And you no longer have that registration?
- 2 A Correct.
- 3 Q And what was the reason for the termination of
- 4 the --
- 5 A I left the trading floor, just there's no need for
- 6 me to have a license and be standing in the trading pit, as
- 7 they call it, anymore.
- 8 Q And during the time that you held that license or
- 9 registration, had it lapsed at any time?
- 10 A No.
- 11 Q Was it ever suspended during that time?
- 12 A No.
- 13 Q Do you have any other professional registrations or
- 14 licenses?
- 15 A No.
- 16 Q Are you currently an officer or director of any
- 17 publicly held company?
- 18 A I am.
- 19 Q Which company is that?
- 20 A Positron Corporation.
- 21 Q And what's your position there?
- 22 A I am Chairman of the Board.
- 23 Q Do you hold any other positions?
- 24 A No.
- 25 Q Have you held any other positions with Positron?

1 A No.

2 Q Have you been an officer or director previously of
3 any other publicly held company?

4 A I was Chairman of the Board for Cipher Holding Corp
5 years ago. But I resigned years ago.

6 Q Do you know what approximate year you resigned?

7 A Oh, '03 maybe? '02, to '03.

8 Q And what was your reason for resigning?

9 A Just I wasn't doing anything with it. I wasn't, I
10 wasn't actively involved, nothing. You know, lack of
11 interest I guess. I don't know. Just focusing on my fund.

12 Q Okay. And do you hold any of the Positron stock as
13 an individual?

14 A No.

15 Q Okay.

16 MS. BERGES: What is Positron Corporation?

17 THE WITNESS: It is a PET manufacturing, a PET is
18 Positron Emission Tomography. It is like an MRI, but it's
19 more nuclear medicine.

20 And it's good, it's not good. It's used for
21 oncology, detection of cancer, cardiology. Detects blockages
22 in the flow, you know, lack of flow issues.

23 So it's an up and coming technology, if you will.
24 Well, it's been around forever.

25 MS. BERGES: How long have you been Chairman of the

1 Board? Or since when?
2 THE WITNESS: Two years.
3 MS. BERGES: Okay.
4 BY MS. OTTOSEN:
5 Q Who are the officers of Positron?
6 A Sachio Okamaro.
7 Q Can you spell that?
8 A S-a-c-h-i-o Okamaro, O-k-a-m-a-r-o? I'm not so
9 sure I know exactly how to spell it, but.
10 Q And what position does he have?
11 A Just a Board member.
12 Q Board member. And who else is?
13 A Anthony, Dr. Anthony Nicholls, N-i-c-h-o-l-l-s.
14 Q Okay.
15 A Same, Board member.
16 Q Okay.
17 A David Wilson.
18 Q Board member?
19 A Same.
20 Q Okay. Any other Board members?
21 A Myself. Joseph Oliverio, O-l-i-v-e-r-i-o.
22 Q And who is the President of the company?
23 A Oliverio.
24 Q Okay. And Vice President, is there one?
25 A I don't know if there's officially one, no. There

1 is a CFO Corey Conn.

2 Q Okay.

3 A That would probably do it.

4 Q Okay.

5 A They had about 12, 15 employees.

6 Q And regarding Cipher --

7 A Holding.

8 Q -- Holding, you left that a couple years ago?

9 A Yes.

10 Q And what is that company? What does it do?

11 A Well, at the time it was a multimedia company in
12 the fact that it was into digital rights management and
13 blocking of digital content. It was a, it's a software
14 company.

15 Q Okay. You said at that time. Is it still that?

16 A Actually now it's more into really, it's in the,
17 more so in the nuclear medicine business now. More in the
18 center's business.

19 Q And is it still called Cipher?

20 A No, it's called Imaging Molecular Corporation.

21 Q And do you own any stock of Cipher or Imaging
22 Molecular Corporation?

23 A I do.

24 Q Okay. And how much do you own?

25 A Oh, less than 10 percent of the company, from the

1 Q Okay.

2 A If you may, if I may, I've used guys that help you
3 make a web site, guys that help you create you know, sharp
4 ratios I mean, all the hard core, I'll call it marketing
5 material, but hard core information that's created for web
6 site, like you know, like the, like I say, the sharp ratios,
7 the risk reward.

8 You know, just the, just the, I don't know what to
9 say. The, I'll call it marketing material. I guess that's
10 it. I mean, Power Points.

11 Q Okay.

12 A All of the above.

13 Q And the marketing material that they create, do you
14 approve it or review it?

15 A Yes.

16 Q Okay. And are you the ultimate person to approve
17 any marketing material that's being used?

18 A Yes.

19 Q Okay. And what type of investors invest in Solaris
20 Opportunity Fund?

21 A Yeah, yeah. Well, I'll tell you, my break down's
22 65 percent, you know, two-third fund-to-funds. I'd say a
23 third if you called them, I don't know if they call them
24 family offices, you know, wealthy individuals.

25 Guys that like chasing returns and talking about

1 Q Under the private placement section of the April
2 30th balance, which was Exhibit No. 36, there is a balance of
3 \$1,140,000. And if you turn to Bates No. 2120 under
4 Unrealized Gains and Losses for Private Instruments, it shows
5 that this is related to Positron.

6 A Okay. Yes.

7 Q And you mentioned that Positron is a company that
8 develops medical equipment?

9 A Manufactures services to, yes.

10 Q And do you know what Positron's revenues were for
11 last year?

12 A \$800,000 approximately.

13 Q Do you know what their net income was?

14 A I don't know. It's a loss.

15 Q Okay. So it's a net loss? And you said it's
16 traded on the OTC Bulletin Board?

17 A Yes.

18 Q Do you know if the company has ever earned a
19 profit?

20 A I don't know that. It's been around since 1983.

21 Q And how long or and this was structured as a
22 private placement? Is it private stock? Is it stock that's
23 restricted or debt or what type of security is it?

24 A Convertible debt that is convertible into preferred
25 which is therefore convertible into common.

1 Q And is it still considered a convertible debt
2 today, as of August?

3 A Yes.

4 Q Has any of these conversions taken place?

5 A No.

6 Q Okay. And the total cost of the \$102 million and
7 then it shows a market value of six, a little over \$6 million
8 as of April 30th.

9 A Uh-huh.

10 Q Since it's a private security, how did that market
11 value, how was the market value determined on the stock or on
12 this convertible debt?

13 A Actually, they just went by the stock price because
14 it's convertible into common. Therefore, that's where you
15 get the 2220, on the left there, a quantity of 20 million, 22
16 million, one ten million and eight million.

17 Q Okay. So you're using the stock price of the
18 tradeable securities as of the date, April 30th, to come up
19 with the market value.

20 A Right, I would convert, the plan is to convert, so.

21 Q Okay.

22 A Whether they're publicly or privately.

23 Q And who does the pricing for this?

24 A Trident. I should say Trident goes by the closing
25 price. I typically discounted just to be, you know, just to

1 be fair.

2 Q And what do you discount it by? I mean, how much
3 are you discounting it?

4 A You know, you know, I'm not sure. It's relatively
5 arbitrary. It's kind of an average of where it's been, you
6 know, during the, during the, during the course of the month,
7 sort of speak.

8 Q Do you know if the auditors, if they agree with
9 that approach of discounting it? Have you had any
10 discussions with them?

11 A You know, I haven't had that discussion yet. If
12 they mark it to mark it, it would be like much greater. I
13 just thought it was, you know, it may be too much.

14 Q And was this, as of April 30th, going through the
15 documents that were provided to us along with the position
16 sheets, it doesn't look like you have anything that's hedged
17 against this or it's offset by anything. Is that correct?

18 A That's correct.

19 Q Is there a reason why you're not, don't have any
20 hedging or offsetting going on?

21 A Quite frankly, I like to, I'd like to sell some of
22 the position and that's the, the way I said earlier. I mean,
23 you know, it's sometimes you, you know, you sell not to be
24 pigeoned holed. You sometimes, you know, want a stock that
25 is much lower. And what I, you know, what I believe is a

1 secured position, it's a, I feel comfortable with it. But I
2 like to hedge, I just don't know how, there's really not a
3 whole lot of ways to hedge it.

4 Q If you also look on Page 2125, SOF2125, it looks
5 like Solaris Opportunity Fund also purchased Positron in the
6 open market. Is that correct?

7 A Yeah. It was long ago. Actually, I heard some
8 earlier dates than that, but yes.

9 Q In going through your --

10 A This was over, well, not over a year. It was three
11 quarters of a year before. Not that it matters.

12 Q And when did you give up your position of Positron?
13 No, that was Cipher Imagine, correct?

14 A Yes, yes, long ago.

15 Q Okay. And then if you look on Page 2127, Solaris
16 Opportunity has purchased some Imagine Moleculars common
17 stock.

18 A Uh-huh. We still have it.

19 Q And you still have it. Was that hedged or offset
20 by anything?

21 A No.

22 Q And, again, Solaris, I mean, Imagine, does it, did
23 it report any revenues in the last year?

24 A No.

25 Q And has it ever shown a profit?

1 A No.

2 Q Going back to what you were discussing about how
3 you looked at securities and how you decided whether they
4 were something that you would want to put in the Solaris
5 Opportunity Fund that would go with the risk versus reward
6 philosophy, how does Imagine and Positron fit into that
7 strategy that you have?

8 A Well, I feel it fits in it, you know, pretty well
9 meaning that they're, you know, sound business. Granted they
10 have not made a profit. I understand that. There was not a
11 whole lot of down side. So I think it's, you know, quite
12 frankly in some ways, there's two ways to look at it. It's a
13 cheap call, which I buy many cheap calls and cheap puts, I
14 think I kind of described earlier.

15 And is also, as far as the edge side, I just think,
16 in regards of Positron, I mean, it's just a tremendous edge
17 in what, what the company, you know, the company does and
18 where it's going. And, you know, price wise, there's not
19 much risk. You know, I understand now that there is a, maybe
20 some risk that I'm weighted, I'm very heavily weighted on it.
21 But that's why, why the game plan now is just actually to be
22 more balanced, just to a more balanced fund.

23 I don't know what else I can say besides, you know,
24 I think the position is terrific. And it's as sound as, it's
25 as sound as anything I've done. Granted when you can buy,

1 when a stock's \$60 and very liquid and you can buy some puts
2 on it, it makes it a whole lot easier. But like I said,
3 things are so fairly priced, it just wasn't a, it's
4 difficult, it's difficult to create, it's difficult to kind
5 of get those kind of opportunities to really make an impact
6 and, you know, perform.

7 Q And Imagine, where is it traded?

8 A Bulletin board.

9 Q Bulletin board also? When you did research for
10 your purchase of Imagine Molecular, what type of due
11 diligence did you do regarding that purchase?

12 A There's not a whole lot to do. It's really more of
13 a trading price. You know, a lot of times, you know, it just
14 comes out to where, hey, this could be a, this is just a okay
15 buy. I mean, just a good place to enter at. You know, no
16 different than, well, I shouldn't say, no different than the
17 process you go through for buying S & P's or the Apple stock
18 or whatever it may be or for selling, for that matter. It's
19 a hold. It's a buy and hold.

20 Q And Imagine Molecular, it develops, if I remember
21 correctly, also medical equipment?

22 A No, no. Centers.

23 Q Centers, okay. Can you explain to me what it does?

24 A It looks to joint venture with centers, I don't
25 know everything it does, quite frankly. But, you know, it

1 looks to joint venture with centers like Beth Israel, which
2 they've done something with, and set up pet centers, cardiac
3 pet centers, kind of like MRI, kind of like MRI centers that
4 were across the world, the country. They want to do the same
5 thing with cardiac pet. It's a more specific pet than a pet
6 for oncology or cardiac or aneurism or whatever else,
7 whatever the disciplines it's on.

8 But I know that the Positron system is great for
9 cardiac and can be used for oncology, just not as good as the
10 pet CT GE \$3 million, \$3.5 million device. So it's filling a
11 niche now that is come around to it. So, I have to admit, I
12 have done a lot of due diligence on Positron but on Imagine,
13 no.

14 Q Is Positron then, when you're talking about its
15 equipment, is it something that Imagine Molecular could use
16 in its centers?

17 A Yes.

18 Q Okay. So is there a future plan where Positron
19 will be selling its equipment to Imagine?

20 A I hope so.

21 Q Okay. And Corey Conn, he's the CFO of Imagine. Is
22 he involved with Positron at all?

23 A He is, he is. He's the CFO.

24 Q Okay. Is he CFO of Positron or Imagine?

25 A Yes, of both.

- 1 Q Of both.
- 2 A Both, yeah.
- 3 Q Okay.
- 4 MR. JUDGE: Well, just to clarify, we've been
5 talking about two different Imagines during the course of the
6 day today.
- 7 MS. OTTOSEN: Right now we're talking about Imagine
8 Molecular.
- 9 MR. JUDGE: Okay.
- 10 BY MS. OTTOSEN:
- 11 Q Okay. And there's Imagine Diagnostics, correct?
- 12 A That's how I got into, I'm sorry.
- 13 Q No, go ahead. And Imagine Diagnostics is what
14 company?
- 15 A It's a private company. It was the original
16 investor in Positron.
- 17 Q Okay and --
- 18 A That's how I got involved.
- 19 Q And Imagined Diagnostics, who are the officers of
20 that company?
- 21 A Dave Wilson, Cynthia Jordon. I don't know. They
22 have others. They have more committees, I believe, than
23 officers. It's a private company that is in molecular energy
24 and radiopharmaceutical and, you know, nuclear energy.
- 25 Q And has your dad, Patrick J. Rooney, is he involved

1 with any of these companies?

2 A With IDC, you know, he was, he was, you know, one
3 of their business development kind of guys.

4 Q And IDC was the Imagined Diagnostic --

5 A IDC, yes.

6 Q Which is the Canadian company.

7 A Yes.

8 Q Was he involved with Cipher before it changed
9 names?

10 A No.

11 Q Okay. And is he involved with Imagine Molecular at
12 all?

13 A No.

14 Q And Positron?

15 A No.

16 Q Okay. And as part of your due diligence for either
17 the Imagine stock you purchased or the Positron stock that
18 was purchased, did you receive any opinion letters regarding
19 these securities?

20 A No.

21 Q Okay.

22 BY MS. BERGES:

23 Q Did you maintain any research on these companies
24 that you conducted in the context of due diligence in making
25 the decision?

1 A No, I'm sorry. I didn't maintain anything. I
2 mean, it's all public record. So, it's extensive, to say the
3 least.

4 BY MS. OTTOSEN:

5 Q And in the November 1st, 2004 PPM on Page 42,
6 there's a whole section about conflicts of interest, what the
7 general partner can and cannot do. My question is regarding
8 these related transactions and related party transactions,
9 it's not, it doesn't seem that that is defined anywhere in
10 the PPM as something that could be a possible conflict of
11 interest. Do you have that exhibit?

12 A Yes.

13 Q It's Page 42. For the record, it was marked
14 Exhibit 31. In general, for the conflicts of interests, the
15 general partner's accountable to the partnership. Management
16 will receive substantial advisory fees. You can be involved
17 in competing ventures, which basically talks about how you
18 can manage other things besides what you're doing. It's not
19 a full time position unless it needs to be. You can provide
20 other advisory services to others. There's a lack of
21 separate representation regarding the contract's arrangements
22 between the partnership on the one hand and the general
23 partner on the other. And then there's the soft dollars in
24 directive brokerage.

25 I guess my question is, because it seems to me like

1 Positron and Imagine Molecular and also Imagine Diagnostics,
2 there seems to be some type of related parties either because
3 you were once working for them or you, Corey Conn, who is
4 somebody you know very well works for them or whatever. Why
5 is that not defined within your conflict of interest within
6 the PPM, that purchasing stocks within these companies
7 where's there's related parties?

8 A Well, in competing --

9 Q Or am I just --

10 A In competing ventures, you know, it's not as clear
11 as you would like. I apologize. I mean, it's definitely,
12 you know, it addresses it in the audit, in the audit it
13 addresses that, it addresses that --

14 Q Related parties?

15 A There were related parties. I don't know --

16 Q Okay. Do investors, do they ever see the position
17 that Solaris Opportunity Fund holds?

18 A Sometimes, not really, rarely.

19 Q Have they seen the latest positions at all, if you
20 recall?

21 A No. But when I say that, I say they rarely see the
22 positions because they just rarely see them, I mean, very
23 rare.

24 Q Okay. And regarding the receivables that you have
25 outstanding, that's about half, as of April 30th, the

1 receivables outstanding is \$6.9 million worth. The capital
2 contribution was \$13.2?

3 A Uh-huh.

4 Q I guess I'm still confused, and I'd like you to
5 explain it to me, allowing these, I know you said that
6 Solaris Opportunity was selling positions to these companies
7 but there's such a long date. If these companies don't pay
8 back, then what happens?

9 A They don't pay back, I mean, you know, when I say
10 secured by the securities --

11 Q Do you have recourse to go back and get the
12 securities?

13 A Yes. And like I say, this is why the Solaris
14 management, me, stood in place of the fund in February of
15 '05, you know, early '05. It just, it seemed like the right
16 thing to do. I mean, I'm trying to be, it's just a fair
17 thing to do.

18 Q And regarding the security interest that you have,
19 are they subordinated to anything else, to someone else's
20 security interest?

21 A No.

22 Q Okay.

23 MS. OTTOSEN: Can I ask you to mark that as Solaris
24 Exhibit 39?

25

1 (SEC Exhibit No. 39 was marked for
2 identification.)

3 MS. OTTOSEN: Counsel, I'm handing you a copy of
4 what's being marked as Exhibit 39.

5 MR. JUDGE: Thank you.

6 BY MS. OTTOSEN:

7 Q Mr. Rooney, I'm handing you what's just been marked
8 as Exhibit 39. Look that over.

9 MS. OTTOSEN: I'm going to ask the Court Reporter
10 to mark this Exhibit 40.

11 (SEC Exhibit No. 40 was marked for
12 identification.)

13 MS. OTTOSEN: That one's 39 and this will be 40.

14 MR. JUDGE: 40 is going to be the May 30th, 2006 --

15 MS. OTTOSEN: Yes, the Securities Exchange
16 Agreement.

17 BY MS. OTTOSEN:

18 Q Mr. Rooney, I'm handing you what's just been marked
19 Solaris Exhibit 40. Do you recognize these documents, Mr.
20 Rooney?

21 A Yes.

22 Q And how do you recognize these documents?

23 A They're fund documents.

24 Q I'll be honest with you, I just received these
25 documents yesterday so I was wondering if you could explain

1 to me what this transaction is and what the result will be
2 for Solaris Opportunity Fund?

3 A Well, actually it's a sale of the Positron
4 position.

5 Q Okay, which position?

6 A All of them.

7 Q The private, the restricted shares or the
8 restricted shares plus what's traded in the public market?

9 A No, no, no, I'm sorry. All of them in the private
10 world.

11 Q Okay. The \$1.1, it had the cost value of \$1.1
12 million and then the market value of, as of April 30th?

13 A No, this is, yes, yes, yes, you're right. I'm
14 sorry.

15 Q Okay.

16 BY MS. BERGES:

17 Q All of the entire position held by Solaris or all
18 of the private shares available of Positron?

19 A All of the private transaction that were in my
20 world, whether it was Solaris Management, Solaris Fund. I
21 guess that's it's.

22 Q Okay.

23 BY MS. OTTOSEN:

24 Q Okay. So, I guess I'm trying to understand how
25 this works. So this is the sale of the shares that you had

1 receivables for with Imagine, Solaris Management, Jeaga
2 Corporation plus the private placement? No?

3 A No, no. It's, it goes into three, into three, I
4 call it three boxes. Let me see if it matches. It goes --
5 and position?

6 Q Yes.

7 A Solaris Management, and the part of it that is on
8 the books, that Solaris has invested in in Positron.

9 Q The private placement.

10 A The 57 million shares, is the way I call it.

11 Q Okay.

12 A You see, remember the 20, 22, 10 and 5?

13 Q Yes. That would be on SOF2120?

14 A Correct.

15 Q Okay. So you're selling those and in exchange
16 you're accepting a note receivable for \$11.4 million.

17 A Exactly.

18 Q Which will eliminate, if I understand correctly
19 from, I've looked over the receivables for Management,
20 Solaris Management, correct? And then it will replace it,
21 so, you'll be reducing your receivable balance by about,
22 close to \$6 million and then you're replacing it with another
23 \$11 million.

24 A And the \$57 million on that 21, whatever you said,
25 2130 or something, 2120?

1 Q Right.

2 A So that's the three pieces.

3 Q Okay.

4 A Solaris Management, Imagine, IDC.

5 Q Okay.

6 A The one in the same.

7 Q And then you're selling, you're reducing these
8 positions.

9 A Exactly.

10 Q Okay. And then this also involves a company called
11 Quantum Molecular Pharmaceutical.

12 A Yeah, they're the buyer.

13 Q And who is that?

14 A Well, I mean, that's, that's, well, that would be
15 Dave, it's David Wilson. This is his, he's the
16 Radiopharmaceutical guy and he is, this is his, this is his
17 company.

18 Q Okay.

19 A He has other officers. I don't know. I believe he
20 has other officers.

21 Q Okay. And it's a Canadian company also?

22 A Yes.

23 Q Is it related to Imagine Diagnostics?

24 A No.

25 Q No?

- 1 A They have similar shareholders that I know of.
2 It's semi-related in some way, shape, or form. It's the
3 radiopharmaceutical Division of the Center business.
- 4 Q So, I guess, and like I said, I just got these
5 yesterday so I haven't had time to really review them
6 thoroughly, but what is your understanding of the benefits to
7 Solaris Opportunity Fund for this transaction?
- 8 A It's an exit strategy.
- 9 Q Okay, an exit strategy for the Positron shares?
- 10 A Yeah, for the fund, in that position, the Positron
11 position, yes.
- 12 Q Okay. And according to the note you'll be
13 receiving the \$11.4 million on December 31st, 2006? That's
14 when it's due? That would be --
- 15 A I just want to make sure of it, yeah.
- 16 Q Okay.
- 17 BY MS. BERGES:
- 18 Q What is a zero percent position?
- 19 A Well, a couple of things. One, we also have the
20 right to buy 50 million shares at five cents. They gave us a
21 kicker, if you will.
- 22 Q 50 million shares of Positron?
- 23 A Of Positron, of Positron.
- 24 Q Of Positron.
- 25 A Right, it's just a kicker.

1 Q What was the purpose of the transaction? I mean,
2 you said --

3 A For the exit, I mean, it's, you know, although I'd
4 love to hold it. It is proper for me to exit.

5 Q You realistically expect Quantum Molecular to pay
6 Solaris \$11.10 million at the end of the year?

7 A Yes.

8 Q You do.

9 A Yes, I do.

10 BY MS. OTTOSEN:

11 Q Does Quantum Molecular, is it reporting any profits
12 at this time?

13 A No, none at all.

14 Q No profits?

15 A No.

16 Q Is it reporting any revenues or any sales?

17 A No, they will own, effectively own Positron and
18 Positron sales now with, with some of the, you know, some of
19 the consolidation its done, it's done an acquisition three
20 months ago with a company called IS2 that has about \$7
21 million in revenue. That's Canadian so six and-a-half
22 million in revenue.

23 So, it's, so the, they're, that universe has a lot
24 more revenue. It has a little debt except for position. And
25 it is the only one with an NOC, Notice of Compliance, in

1 Canada to distribute, I don't know if it's manufacture or
2 distribute, FDG, which is Radiopharmaceutical, which is,
3 that's the, that's important.

4 Q Before you entered into this agreement with Quantum
5 Molecular, did you look or obtain their financial statements
6 and do any due diligence on the company?

7 A Yeah, yeah. I'm not sure I had their financial
8 statements. The company is formed this year. It is to
9 aggregate nuclear medicine and businesses. So, so I'm
10 comfortable with it. If not, I'll take the position back.
11 It's not, like I say, we're doing what's best for the fund.

12 Q So, in the meantime, you'll be, I mean, in the
13 meantime you'll have a receivable on your book for \$11.4
14 million. You won't have any positions because those will be
15 transferred over. So basically what securities will you have
16 or that you'll be trading for Solaris Opportunity Fund or
17 will you have anything that you can trade with?

18 A Not, you know, not as much as, not as much as I'd
19 like. But I have, you know, I have, I have cash of trade.

20 Q Have you notified the limited partners regarding
21 this transaction?

22 A No. I've never notified them of any transaction.
23 I mean, meaning buying Apple or doing anything else. It can
24 be discussed though, in a sense, for discussion.

25 Q I want to ask you when you first opened your

EXHIBIT "B"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND)	
EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	11 C 8264
)	
PATRICK G. ROONEY and)	
SOLARIS MANAGEMENT, LLC,)	
)	
Defendants.)	

ORDER

CHARLES P. KOCORAS, District Judge:

Before the Court is Defendants Patrick Rooney (“Rooney”) and Solaris Management, LLC’s (“Solaris Management”) (collectively “Defendants”) motion for leave to amend their answer pursuant to Federal Rule of Civil Procedure 15(a). For the reasons set forth below the Defendants’ motion is granted.

Plaintiff Securities and Exchange Commission (“SEC”) filed a complaint on November 18, 2011 alleging multiple counts of federal securities violations. The SEC alleges that Rooney, acting as the sole owner and managing partner of Solaris Management, made numerous undisclosed investments in Positron Corp. (“Positron”), a company he had a vested interest in. Rooney served as the chairman of the board of Positron beginning in July 2004. He also managed the Solaris Opportunity Fund, LP

(“Solaris Fund”) a hedge fund which was overseen by Solaris Management. The Solaris Fund made multiple large investments in Positron, which was against the Solaris Fund’s diversification strategy. Additionally, Rooney did not inform the Fund’s investors of his position with Positron. On August 8, 2006, the SEC conducted an interview with Rooney concerning his involvement with Positron and the investment activity of the Solaris Fund.

On February 12, 2012 the Defendants filed their answer to the SEC’s complaint. The Defendants’ answer did not raise a statute of limitations affirmative defense. Defendants seek leave from the Court to amend their answer to add a statute of limitations affirmative defense.

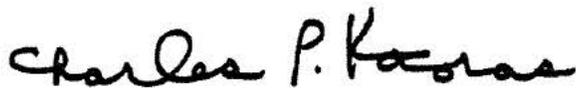
Federal Rule of Civil Procedure 15(a) provides that a party must obtain leave of court or written consent of the opposing party to amend a pleading. *See Garner v. Kinnear Mfg. Co.*, 37 F.3d 263, 269 (7th Cir. 1994). Under Rule 15(a), a district court may grant leave to amend pleadings and such leave “shall be freely given when justice so requires,” so long as there is no harm to the either party. Fed. R. Civ. P. 15(a); *Perrian v. O’Grady*, 958 F.2d 192, 194 (7th Cir. 1992). “Leave to amend is inappropriate where there is undue delay, bad faith, dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of

the amendment.” *Villa v. City of Chicago*, 924 F.2d 629, 632 (7th Cir. 1991). If the amended claim would not survive a motion for summary judgment, the amended claim is futile. *Bethany Pharmacal Co v. QVC, Inc.*, 241 F.3d 854, 861 (7th Cir. 2001). For the purpose of gauging the futility of a proposed amendment, the court considers the record as a whole and draws all reasonable inferences in the light most favorable to the party opposing the motion. *Cf. Bay v. Cassens Transport Co.*, 212 F.3d 969, 972 (7th Cir. 2000) (setting forth the standard for analyzing the factual allegations of the parties when determining a motion for summary judgment).

The SEC argues that the Defendants inclusion of a statute of limitations defense would be futile and should be denied. The SEC contends that the Defendants misconduct occurred primarily between 2007 and 2008, well within the five year period given for the enforcement of a civil fine by the SEC. *See* 28 U.S.C. § 2462. In the SEC’s November 11, 2011 complaint, the allegations refer to fraudulent conduct beginning in 2005 and ramping up to the most substantial acts of misconduct transpiring in 2007 and 2008. Although the most substantial acts occurred in 2007 and 2008, the Defendants argue that the initial activity occurring in 2005 and the SEC’s interview of Rooney, concerning his involvement with Positron on August 8, 2006, triggered the statute of limitations clock.

The U.S. Supreme Court held in *Merck & Co. v. Reynolds*, 130 S.Ct. 1784, 1794 (2010), that a federal securities fraud claim accrues when the litigant knows, or with due diligence should know, the facts underlying the alleged violation. Therefore, the clock starts to run when a reasonably diligent plaintiff would have discovered the facts constituting the fraud. *Id.*

In this case, the SEC formally conducted an interview with Rooney concerning his involvement with Positron on August 8, 2006. The information requested during the interview concerned the same issues raised in the SEC complaint. The date of the interview predates the November 11, 2011 complaint by more than five years, potentially barring the SEC claim. The information presented by the Defendants establish a sufficient basis to show that a statute of limitations affirmative defense may bar the claim. The Court grants the Defendants' motion to amend their answer to include a statute of limitations affirmative defense.



Charles P. Kocoras
United States District Judge

Dated: February 7, 2013

EXHIBIT “C”



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Miami REGIONAL OFFICE
SUITE 1800
801 BRICKELL AVENUE
MIAMI, FL 33131
(305) 982-6300**

March 9, 2009

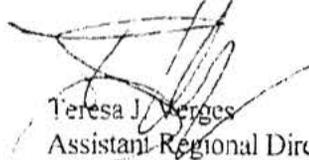
Mr. Patrick G. Rooney
[REDACTED]

Re: Solaris Opportunity Fund, L.P. (FL-03214)

Dear Mr. Rooney:

This investigation has been completed as to Patrick G. Rooney, against whom we do not intend to recommend any enforcement action by the Commission. We are providing this information under the guidelines in the final paragraph of Securities Act Release No. 5310 (copy attached).

Sincerely,


Teresa J. Verges
Assistant Regional Director



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Miami REGIONAL OFFICE**
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(305) 982-6300

March 9, 2009

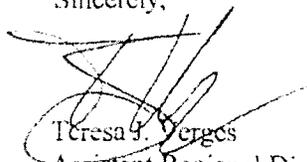
Solaris Opportunity Fund, L.P.
700 Commerce Drive Suite 500
Oak Brook, IL 60523
Attention: Patrick G. Rooney

Re: Solaris Opportunity Fund, L.P. (FL-03214)

Dear Mr. Rooney:

This investigation has been completed as to the Solaris Opportunity Fund, L.P., against whom we do not intend to recommend any enforcement action by the Commission. We are providing this information under the guidelines in the final paragraph of Securities Act Release No. 5310 (copy attached).

Sincerely,



Teresa J. Verges
Assistant Regional Director



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Miami REGIONAL OFFICE
SUITE 1800
801 BRICKELL AVENUE
MIAMI, FL 33131
(305) 982-6300**

March 9, 2009

Solaris Management, LLC
700 Commerce Drive Suite 500
Oak Brook, IL 60523
Attention: Patrick G. Rooney

Re: Solaris Opportunity Fund, L.P. (FL-03214)

Dear Mr. Rooney:

This investigation has been completed as to Solaris Management, LLC, against whom we do not intend to recommend any enforcement action by the Commission. We are providing this information under the guidelines in the final paragraph of Securities Act Release No. 5310 (copy attached).

Sincerely,

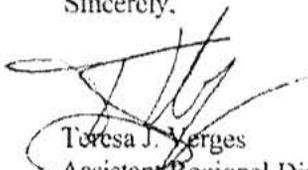

Teresa J. Verges
Assistant Regional Director

EXHIBIT “D”

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

ADMINISTRATIVE PROCEEDING
File No. 3-15671

In the Matter of

PATRICK G. ROONEY,

Respondent.

AFFIDAVIT OF PATRICK G. ROONEY

I, Patrick G. Rooney, being first duly sworn, under penalties of perjury, depose and state:

1. I have personal knowledge of the facts stated herein and if called as a witness I could and would competently testify thereto.

2. I am the sole owner and manager of Solaris Management, LLC. Solaris Management is the general partner of the Solaris Opportunity Fund, LP. The Solaris Offshore Fund is a feeder fund for the Solaris Opportunity Fund. The Offshore Fund's only investment is in the Opportunity Fund.

3. On August 9, 2006, the Commission interviewed me and subpoenaed hundreds of pages of documents, relating to the events at issue in the complaint in Northern District of Illinois Case No. 11-CV-8264.

4. Shortly after, March 9, 2009, I received a letter pertaining to the 2006 investigation stating, "This investigation has been completed as to [Patrick G. Rooney, Solaris Opportunity Fund, LP and Solaris Management, LLC, respectively], against whom we do not intend to recommend any enforcement action by the Commission."

5. I understood this as an indication that his conduct was not unlawful and the Fund could continue investing in Positron.

6. Prior to November 2008, the Fund had a substantial portfolio of non-Positron investments which it actively traded every day. For example, in any given year between 2005 through 2008, the Fund traded millions of non Positron shares and options. During this same period, in any one day I estimate Solaris typically held an aggregate of 10,000 option positions (longs/shorts) in numerous stocks and indices.

7. The Fund incurred major trading losses in the broad market, shrinking the portfolio of non-Positron investments. The Fund also incurred substantial redemptions. The Fund became wholly invested in Positron due, in large part, to market losses causing substantial loss in value in its non-Positron portfolio and redemptions.

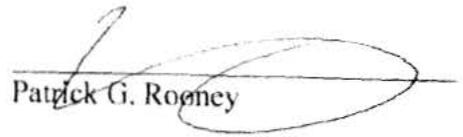
8. I have no intention of working as an investment advisor or broker, managing an investment fund or otherwise managing other people's money. Once matters regarding Solaris are appropriately resolved, I intend to dedicate my full attention to executing Positron's long-term plan and optimizing the return for Positron's shareholders.

9. I will never in the future commit the type of conduct alleged in the complaint in Northern District of Illinois Case No. 11-CV-8264.

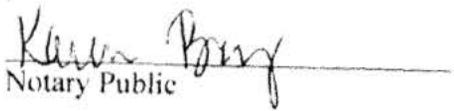
10. Through my tenure at Positron, I estimate that Positron has had at least 100 investors other than Solaris. Solaris has not invested in Positron since 2008. Since 2008, I estimate that Positron has had at least 30 different investors.

FURTHER AFFIANT SAYETH NOT.

By:


Patrick G. Rooney

Subscribed and Sworn to before me
This 26th day of April, 2014.


Notary Public

